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What is a Life Worth?

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NOTES AND COMMENTS

What Is A Life Worth?

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The State of Colorado by law declares that no life is worth more than $10,000.00. Section two of Colorado's wrongful death statute defines wrongful death,[1] and section three provides,

> "and in every such action the jury may give such damages as they deem fair and just, not exceeding ten thousand dollars, with reference to the necessary injury resulting from such death, to the surviving parties, who may be entitled to sue; and also having regard to the mitigating or aggravating circumstances attending any such wrongful act, neglect, or default."[2]

At common law there was no civil remedy against one who tortiously caused the death of another; the wrongful death action is purely a creature of statute. Death acts have been adopted by all of the states and although the statutory regulations in regard to damages are distinctive in each jurisdiction, all of the wrongful death statutes are modeled upon the first law of this type, Lord Campbell's Act, adopted in England in 1846.[3]

The first Colorado statute to authorize wrongful death actions was unanimously enacted by the 1872 session of the territorial legislature.[4] That act did not limit the amount which might be recovered as damages in death cases.[5] However, in 1877 the law was revised to read almost as it does today and to add a provision limiting damages recoverable to a maximum of $5,000[6]. The 1877 statute

1 Colo. Rev. Stat. Ann. § 41-1-2 (1953).
2 *Id.* § 41-1-3.
3 Stat. 9, 10 Vict. c. 93 (1846).
4 Colo. H. Jour. 9th Sess. (1872).
5 Colo. Sess. Laws 342 (1872).
6 Colo. Sess. Laws c. 877 §§ 1-3 (1877).

further provided, as does the present law, a minimum recovery of $3,000 applicable only where the death was wrongfully caused by a common carrier.[7] How much support these original limits had will probably never be known since, according to the Library of Congress, there were no legislative journals printed for the first session of the Colorado General Assembly of 1877. The $5,000 limitation remained unchanged until 1951 when the General Assembly raised the maximum damages to $10,000.[8] This act, House Bill No. 78, was introduced on January 18, 1951, and assigned to the Judiciary Committee. It was reported favorably from this committee and passed without opposition in the House or Senate.[9] If there were attempts either to raise the maximum figure provided by the bill, or to oppose raising the $5,000 limit, they were confined to committee sessions.

Colorado is by no means the only American jurisdiction to restrict damages recoverable for wrongful death by the device of a statutory maximum limit. Thirteen sister states,[10] and Alaska[11] have similar limitations, but only Maine[12] has a ceiling as low as that in Colorado. Even Maine, with its $10,000 general limitation on damages for wrongful death, must be considered more liberal than Colorado in this regard; for the Maine statute allows recovery of reasonable medical, hospital and funeral expenses as well as damages for conscious suffering prior to death, all in addition to the basic $10,000 maximum for the wrongful death proper.[13]

Indiana limits recovery in wrongful death actions to $15,000, and if there is no surviving spouse, dependent child, or dependent next of kin, to $1,000 for hospital services, $1,000 for medical services, $1,000 for burial expenses, and $1,000 for administrator's expenses and attorney's fees.[14] New Hampshire limits damages to

7 *Id.* § 1.
8 Colo. Sess. Laws, c. 50 §§ 1-3 (1951).
9 Colo. H. Jour. 38th Gen. Ass. (1951).
10 Ill. Rev. Stat. c. 70, § 1, 2 (Supp. 1955); Ind. Ann. Stat. § 2-404 (Burns, Supp. 1955); Kan. Gen. Stat. § 60-3203 (1949); Me. Rev. Stat. c. 165, §§ 9-10 (1954); Mass. Ann. Laws, c. 229, §§ 1-2 (Supp. 1953); Mo. Rev. Stat. §§ 537.070-80 (Supp. 1955); N. H. Rev. Stat. Ann. c. 556, §§ 9-13 (1955); Ore. Rev. Stat. § 30.020 (1953); S. D. Code, § 37.22 (Supp. 1952); Va. Code, § 8-633-636 (Supp. 1954); W. Va. Code Ann. § 5474-6 (Michil's Supp. 1955); Wis. Stat. § 331-.03-04 (1955).
11 Alaska Comp. Laws Ann. §§ 60-73 (1949).
12 Me. Rev. Stat. c. 165 §§ 9-10 (1954).
13 *Ibid.*
14 Ind. Ann. Stat. § 2-404 (Burns, Supp. 1955).

$7,500 unless the decedent left a widow, a widower, minor child or children, or dependent father or mother, in which case the maximum is $15,000.[15] In Wisconsin, where damages recoverable for wrongful death are also $15,000, a parent, husband or wife may in addition recover up to $2,500 for loss of society, and a widow with dependent children under fifteen years of age may recover $1,500 above the maximum for each child, but not exceeding a total increase of $7,500.[16] Minnesota courts may award up to $17,500 in a death action, as may the courts of Oregon.[17] South Dakota, West Virginia and Massachusetts have statutes limiting maximum damages to $20,000 in this type of action.[18] Massachusetts more strictly limits recovery against a common carrier to $15,000.[19] Damages of $25,000 are allowed in Kansas, Missouri, and Virginia.[20] Illinois allows $25,000 in damages, except that where no widow or next of kin survives the decedent, a substitute action may be brought by the executor or administrator for hospital, medical, and funeral expenses incident to the wrongful death, and up to $450 may be awarded for each such claim.[21]

Alaska in allowing up to $50,000 sets a higher maximum than does any state having a ceiling on wrongful death awards. In Alaska the action inures to the exclusive benefit of the widow, surviving husband and children of the decedent or, if none, to the children of the decedent's child or children, and the surviving parent or parents of the decedent.[22]

The other states, the territory of Hawaii, and the District of Columbia have no maximum limitations on damages recoverable in wrongful death actions. In fact the constitutions of Arizona, Arkansas, Kentucky, New York, Ohio, Oklahoma and Utah forbid limitation of damages for wrongful death.[23]

Only Massachusetts[24] and Rhode Island[25] seem to conclude that any life must be worth $2,000 or $2,500 by employing these respective minimum limits in death actions. Colorado's only minimum is the $3,000 punitive award in actions against common carriers.[26]

Not only is the wrongful death limit in Colorado the lowest in the nation, but Colorado is equally conservative in two other aspects of wrongful death litigation. First, although the statute authorizes suit by the decedent's husband, wife or "If there be no husband or wife, or he or she fails to sue within one year after such death, then by the heir or heirs of the deceased . . . ,"[27] the

15 N. H. Rev. Stat. Ann. c. 556, §§ 9-13 (1955).
16 Wis. Stat. § 331.03-04 (1955).
17 Minn. Stat. § 573-02 (1953); Ore. Rev. Stat. § 830.020 (1953).
18 Mass. Ann. Laws c. 229, §§ 1-2 (Supp. 1953); S. D. Code § 37.22 (Supp. 1952); W. Va. Code Ann. § 5474.5-6 (Michil's Supp. 1955).
19 Mass. Ann. Laws c. 229, §§ 1-2c (Supp. 1953).
20 Kan. Gen. Stat. § 60-3203 (1949); Mo. Rev. Stat. §§ 537.070-80 (Supp. 1955); Va. Code § 8-633-636 (Supp. 1954).
21 Ill. Rev. Stat. c. 70, §§ 1, 2 (Supp. 1955).
22 Alaska Comp. Laws Ann. §§ 60-73 (1949).
23 Ariz. Const. Art. II, § 31; Ark. Const. Art. 5, § 32; Ky. Const. § 241; N. Y. Const. Art. I, § 16; Ohio Const. Art. I, § 19a; Okla. Const. Art. XXIII, § 7; Utah Const. Art. 16, § 5.
24 Mass. Ann. Laws, c 229, §§ 1-2c (Supp. 1953).
25 R. I. Gen. Laws, c. 477 § 1 (1938).
26 Colo. Rev. Stat. Ann. § 41-1-1 (1953).
27 *Ibid.*

words "heir or heirs" have been narrowly construed to restrict the right of action to lineal descendents if there is no surviving husband or wife.[28] Second, the statute itself provides that the action must be brought within two years after commission of the wrongful act rather than within two years after the death which gives rise to the cause of action.[29]

A more important consideration in regard to the subject of damages is the extreme conservatism of the Colorado supreme court in construing the statutory directive to consider "mitigating and aggravating circumstances attending" the wrongful act.[30] Even though the phrase "mitigating and aggravating circumstances" is ordinarily interpreted to authorize punitive or exemplary damages,[31] the Colorado court has limited wrongful death recoveries to actual or compensatory damages.[32] In 1892 the court decided that the degree of negligence and the intent involved in the commission of the wrongful act are not to be considered in determining the amount of damages to be awarded, that such damages are compensatory only, and that "the words mitigating and aggravating circumstances attending such wrongful act, etc. contemplate circumstances, not relating to the wrongful act itself, but such as affect the actual damages suffered by the surviving party entitled to sue, either by way of diminishing or enhancing the same."[33] These cases seem to be controlling even today.[34]

Colorado courts apparently have encountered trouble in determining the proper measure of damages for wrongful death ever since the enactment of the original wrongful death act of 1872.[35] In 1874 the Colorado Supreme court said:

> "in actions brought by one to recover for injuries sustained through the negligence or misconduct of another, mental anguish and sufferings are legitimate subjects for compensation. . . . (S)o, too, when the injury has been the result of wanton-

28 Hindry v. Holt, 20 Colo. 178, 37 Pac. 721 (1894).
29 Colo. Rev. Stat. Ann. §41-1-4 (1953).
30 *Id.* § 41-1-2.
31 Tiffany, Death By Wrongful Act § 139 (2d ed. 1913).
32 Moffatt v. Tenney, 17 Colo. 189, 30 Pac. 348 (1892); Hayes v. Williams, 17 Colo. 465, 30 Pac. 352 (1892).
33 Moffat v. Tenney, 17 Colo. 189, 198, 30 Pac. 348 (1892).
34 Fish v. Liley, 120 Colo. 156, 208 P. 2d 930 (1949) (leading wrongful death and survival case which referred to the 1892 cases cited in note 32 *supra*).
35 Colo. Sess. Laws 117 (1872).

ness, violence, or gross negligence, punitive damages have been awarded."[36]

Two years later the same court said that compensatory damages might be awarded under the 1872 statute and that there was also a right to exemplary damages where there was willful misconduct or entire want of care.[37] Then in 1878 the court stated, in deciding a case brought under the 1872 act, and heard by the appellate court after the passage of the 1877 act,[38] "Whatever may be said of the act approved March 7, 1877, the act of February 8, 1872, is not to be regarded in any proper sense as a penal statute."[39]

Since enactment of the 1877 act the courts have held that the sections in regard to common carriers are punitive but that those applicable to non-carriers are merely compensatory.[40] Thus in a 1914 interpretation of the provision for a minimum recovery against common carriers, the state supreme court reasoned,

> "The fact that no matter how young or old, how infirm or useless the deceased, the recovery for his death, under this provision is precisely the same, depending on the defendant's failure of duty, as it would be had he been in the prime of life, having the highest capabilities and attainments, mentally and physically, demonstrates with unerring certainty the purpose of the legislature to make it a punitory section pure and simple."[41]

In awarding damages for wrongful death in actions brought under sections other than the common carrier sections the court has held that a proper measure of damages for wrongful death is the pecuniary benefit which could reasonably have been expected to accrue to the person suing by the continued life of the decedent, as of grace and favor if not by right.[42] For example, the estimated future pecuniary benefit to parents of a deceased minor child before the child's majority and also during the parents' anticipated old age, constitute elements of compensable damages.[43] The court has denied recovery for the physical and mental pain, bodily disfigurement, and loss of time suffered by the deceased before his death as a result of the defendant's wrongful act, [44] and for grief and sorrow caused surviving relatives by the death.[45] It was said in an early case that ,"the recovery allowable is in no sense a solatium for grief of the living occasioned by the death of the relative or friend, however dear. . . . (T) his may seem cold and mercenary but it is unquestionably the law."[46]

36 Kansas Pac. Ry. Co. v. Miller, 2 Colo. 442, 464-5 (1874).
37 Kansas Pac. Ry. Co. v. Lunden, 3 Colo. 94 (1876).
38 See note 6 *supra*.
39 Denver Ry. v. Woodward, 4 Colo. 162, 168 (1878).
40 See note 6 *supra*.
41 Denver & R. G. R. R. v. Frederick, 57 Colo. 90, 96, 140 Pac. 463 (1914); *accord* Myers v. Denver & R. G. R. R., 61 Colo. 302, 157 Pac. 196 (1916).
42 McEntyre v. Jones, 128 Colo. 461, 263, P. 2d 313 (1953); St. Lukes Hospital Ass'n. v. Long, 125 Colo. 25, 240 P. 2d 917 (1952); Molly Gibson Consol. Min. & Mil. Co. v. Sharp, 5 Colo. App. 321, 38 Pac. 850 (1894); Denver S. R. R. v. Wilson, 12 Colo. 20, 20 Pac. 340 (1888).
43 St. Luke's Hospital Ass'n. v. Long, supra note 42.
44 Lee v. City of Fort Morgan, 77 Colo. 135, 235 Pac. 348 (1926).
45 Pierce v. Conners, 20 Colo. 178, 37 Pac. 721 (1894); *accord*, Tehrer v. Tarenzen, 124 Colo. 17, 233 P. 2d 382 (1951).
46 Pierce v. Conners, supra note 45 at 182, 37 Pac. at 730.

In emphasizing that these non-carrier sections allow only compensatory damages the court has held that giving the jury instructions on damages which omit the caveat that an award is limited to pecuniary loss and is compensatory, constitutes reversible error.[47] The problem of adequately defining compensatory damages appears to trouble the courts today as it did in an 1884 personal injuries case where the court stated,

> "A misapprehension seems sometimes to exist as to the word compensatory. . . . (U)nder the rule limiting them to compensatory damages, juries will, with proper instructions, recognize a broad distinction between a tort unaccompanied by malice, or circumstances of aggravation or disgrace, and one producing equal direct pecuniary damage where either of these conditions exist. In the former case consider only the actual injury to the person or property, including expenses, loss of time, bodily suffering etc., occasioned by the wrongful act; in the latter, they allow such additional sum as in their judgment is warranted by the circumstances of contumely, anguish or oppression; but in both instances the damages are awarded as compensation; the additional sum is given to the individual as a recompense for the mental suffering, or wounded sensibilities, etc., as the case may be."[48]

That funeral expenses are a proper element of the damages to be recovered under the wrongful death act, within the ten thousand dollar maximum, is well established.[49] However, there seems to have been some conflict in regard to whether an action could be brought, separate from the wrongful death action, to collect for funeral costs. In a 1940 case, the Colorado court held that funeral expenses are a proper element of damages for wrongful death, but that they do not form the basis for a separate cause of action.[50] Yet the same court, in 1954, allowed the administratrix of an estate, where there were no "heirs" entitled to bring suit under the wrongful death act to recover in an action brought for funeral expenses,

47 Denver & R. G. R. R. v. Spencer, 25 Colo. 9, 52 Pac. 211 (1898).
48 Murphy v. Hobbs, 7 Colo. 541, 547-8. 5 Pac. 119. 123-4 (1884).
49 McEntyre v. Jones, 128 Colo. 461. 263 P. 2d 313 (1953); Dillon v. Sterling Rend. Works, 106 Colo. 407, 106 P. 2d 358 (1940).
50 Dillon v. Sterling Rend. Works, supra note 53.

on the theory that this was not an action for personal injury to the decedent, but rather an action to recover money of which the estate had been deprived.[51]

For many years the Colorado courts have sought to define clearly the proper relationship between the wrongful death statute and the survival statute. *American Insurance Company v. Naylor*,[52] a 1937 case, presents one of the more interesting situations litigated under the survival statute. The plaintiff Naylor, before commencing this action under the survival act, had recovered $4,000 under the wrongful death statute to compensate him for the wrongful death of his wife, caused by an agent of the defendant. The court held that such recovery did not preclude another action by the same plaintiff under the survival statute for medical expenses incurred after the accident but before his wife's death. In addition Mr. Naylor was awarded damages for the loss of his wife's services, companionship, and society during the three months between the wife's injury and death. In 1939 the court, in a second appeal of the same case, held that the loss of a wife's services and companionship to a husband and the money spent by a husband caring for the wife's injuries, occurring as a result of the defendant's wrongful act against the wife, constitute a personal injury to the husband for which he may recover, and awarded interest on the damages allowed in the previous case,[53] under the statute providing interest in personal injury tort actions.[54]

> The 1955 legislature amended the survival statute to read, "All causes of action, except for slander or libel and actions brought for the recovery of real estate, shall survive and may be brought or continued notwithstanding the death of the person in favor of or against whom such action has accrued, but punitive damages shall not be awarded nor penalties adjudged . . . in tort actions based upon personal injuries, the damages recoverable after the death of the person in whose favor such action has accrued shall be limited to loss of earnings and ex-

51 Kling v. Phayer, 130 Colo. 158, 274 P. 2d 97 (1954).
52 American Ins. Co. v. Naylor, 101 Colo. 41, 70 P. 2d 349 (1937).
53 American Ins. Co. v. Naylor, 103 Colo. 461, 87 P. 2d 260 (1939).
54 Colo. Rev. Stat. Ann § 41-2-1 (1953).

penses sustained or incurred prior to death, and shall not include damages for pain, suffering or disfigurement, nor prospective profits or earnings after death. An action under this section shall not preclude an action for wrongful death under article one, chapter forty-one of the Colorado Revised Statutes."[55]

The amendment of the out moded survival statute has been favorably noted.[56] As yet there are no reported cases construing the amended statute, but it would seem that proper application of the new law would help remedy a few of the defects of the wrongful death statute, as well as give justice to those injured by a tort-feasor who dies before the injured party can be recompensed. It should now be possible for surviving relatives of a person wrongfully killed to collect in addition to a possible $10,000 for the wrongful death, all of the expenses occasioned by the fatal injury, and for an administrator, prohibited from suing under the wrongful death statute, to preserve the estate by suing under the survival statute. The worst defect of the wrongful death statute, the $10,000 maximum limitation on damages will, however, remain.

A life worth $10,000 in Colorado might be thought to be worth $300,000 by a jury in New York. In *De Vito v. United Airlines,*[57] the jury, in an action for wrongful death, gave an award of $300,000 which was reduced by the trial judge to $160,000. In California a jury might find the same life worth $200,000. In 1953 a California trial judge reduced a jury award of $200,000 to $150,000 in a wrongful death case.[58] A verdict of $150,000 was sustained by the United States Court of Appeals for the Second Circuit in a case in which the decedent was killed in a plane crash.[59]. In a 1952 New York case, the decedent was a thirty-nine year old brakeman survived by a thirty-one year old widow and five children. Out of the total award of $141,500, $116,500 was awarded for death, and $25,000 for conscious pain and suffering prior to death from the injuries sustained.[60] In two other New York cases, damages were $195,888 reducted to $100,000 in one,[61] and $165,000 in the other.[62] In an interesting California case, the decedent was a thirty-five year old army sergeant earning $330 a month who was survived by a thirty-five year old wife and a seven and a half year old child. The damages awarded were $100,000.[63]

Another high award case in New York was *Neddo v. New York,* in which a twenty-nine year old man earning $15,000 a year left a widow with a life expectancy of thirty-six years. The Appellate

55 Colo. Rev. Stat. Ann. § 152-1-9 (Supp. 1955).
56 Note, 28 Rocky Mt. L. Rev. 87 (1955).
57 De Vito v. United Airlines, 98 F. Supp. 88 (E.D.N.Y. 1951).
58 Buck v. Hill, 121 Cal. App. 413, 263 P. 2d 643 (1st Dist. Ct. of App. 1953).
59 Kendall v. United Airlines, 200 F. 2d 269 (2d Cir. 1952).
60 New Haven and Hartford Co. v. Zeramini, 200 F. 2d 240 (1st Cir. 1952).
61 Summerville v. Smucker, 280 App. Div. 839, 113 N.Y.S. 2d 868 (2d Dept. 1952).
62 Pike v. Consolidated Edison Co., 277 App. Div. 1120, 100 N.Y.S. 2d 892 (2d Dept. 1948); new trial granted, 303 N.Y. 1, 99 N.E. 2d 885 (1950).
63 Gall v. Union Ice Co., 108 Cal. App. 2d 303, 239 P. 2d 48 (1st Dist. Ct. of App. 1951).

Division, in affirming an award of $137,566.74, said, "Where the evidence fairly sustains the verdict, the courts are not empowered to declare it excessive upon some economic theory that there must be a limit to a verdict in a death case."[64] In another case, where the decedent had a life expectancy of tweny-five years, earnings of $4,400 the last year of life, and was survived by a thirty-seven year old widow and seven children, a Pennsylvania federal district court allowed an award of $100,000 reduced to $80,000 upon a finding of 20 per cent contributory negligence.[65] The supreme court of North Dakota recently affirmed an award of $55,502.03 where the deceased, a husband and the father of three minor children, had a life expectancy of over forty years and earnings of from $200-$250 a month.[66] The supreme court of New Mexico affirmed on appeal a verdict of $50,000 in a case where the decedent, a twenty-four year old truck driver and structural steel worker, had been wrongfully killed.[67]

A few personal injury awards deserve notice because the relationship of personal injury and wrongful death cases is close, and awards in other jurisdictions are of particular interest in evaluating the proper measure of damages for both types of cases in Colorado. In *Watson v. Florida Power and Light Company,*[68] damages of $260,000 were awarded by a Florida tribunal for personal injuries. A plumber who was permanently injured when a pipe on which he was working blew up in his face, was awarded $250,000 in a New Jersey action.[69] In a 1954 California case, a seventeen year old boy received $97,000 for serious injuries,[70] and in another recent decision from California, a pedestrian on a railroad platform who suffered serious injury when struck by an engine overhang was awarded $25,000 in damages by the jury.[71] In *Hildebrand v.* United States,[72] $65,489 was awarded the plaintiff for injuries

64 Neddo v. New York, 275 App. Div. 492, 501, 90 N.Y.S. 2d 650, 656 (3d Dept. 1949).
65 Thomas v. Conemaugh Black Lick R. R., 133 F. Supp. 533 (W.D. Pa. 1955).
66 Geier v. Tjaden, 74 N.W. 2d 361 (N.D. 1955).
67 Hall v. Stiles, 57 N.M. 281, 258 P. 2d 386 (1953).
68 Watson v. Florida Power and Light Co., 50 So. 2d 543 (Fla. 1951).
69 Keiffer v. Blue Seal Chemical Co., 196 F. 2d 614 (3d Cir. 1952).
70 Hawk v. City of Newport Beach, 286 P. 2d 481 (4th Dist. Ct. of App. 1954), *aff'd.*, 293 P. 2d 48 (Calif. 1956).
71 Gibson v. Southern Pac. Co., 290 P. 2d 347 (1st Dist. Ct. of App. Cal. 1955).
72 Hildebrand v. United States, 134 F. Supp. 514 (S.D.N.Y. 1954).

including a fractured wrist requiring corrective surgery, and a compression fracture of certain vertebrae with subsequent surgery.

In a Florida malpractice suit, where the defendant had unsuccessfully employed the Koch method of treatment on the plaintiff's lip in treating a malignant growth which then spread into the full lip and chin, the plaintiff was awarded $65,000 in damages.[73] A 1955 New Mexico decision, *Thompson v. Anderman,*[74] awarded a thirteen year old boy with a low mentality, $54,000 for serious injuries likely to cause epileptic seizures. The Texas Court of Appeals sustained a verdict of $50,000 in another 1955 case where the plaintiff, a fifty-year old deputy sheriff, suffered ruptured muscles, a ruptured disc with nerve involvement and sciatic pain, chip fractures of the fifth and sixth vertebrae, a ruptured eardrum and a broken nose.[75]

Damages awarded for personal injuries in Colorado are not usually high. However, in *Cahall v. Colorado Wyoming Railroad Company,* [76] a thirty-eight year old brakeman earning $200 a month, received $84,584 in damages for the loss of his left hand and right forearm. $75,000 was awarded in a 1952 Colorado case, to a mental patient who fell or jumped from a hospital window and suffered paralysis from the waist down,[77] but the decision was later reversed for want of evidence of future loss of earnings. In *Riss & Company v. Anderson,*[78] the plaintiff was awarded $23,303.50, in a case against his employer, a railroad company. In another railroad case an award of $15,000 to a fifty-two year old Colorado section hand was held not to be excessive.[79] The Colorado supreme court awarded $33,918 in damages in a 1955 case, to a plaintiff who had suffered a ruptured vertebrae of the neck.[80] A $250,000 suit for damages for personal injuries was settled out of court in November of this year in Denver District Court, for $50,000 cash. $48,000 of

73 Baldor v. Rogers, 81 So. 2d 658 (Fla. 1954).
74 Thompson v. Anderman, 59 N.M. 400, 285 P. 2d 507 (1955).
75 Prater v. Holbrook, 283 S.W. 2d 263 (Tex. Civ. App. 1955).
76 Cahill v. Colorado & Wyoming Ry., U. S. Dist. Ct., Dist. of Colo., Civ. No. 3352 (10th Cir. 1952).
77 United States v. Gray, 199 F. 2d 239 (10th Cir. 1952).
78 Riss & Co. v. Anderson, 108 Colo. 78, 114 P. 2d 278 (1941).
79 Denver & Salt Lake R. R. v. Granier, 104 Colo. 131, 89 P. 2d 245 (1939).
80 Thomas v. Dunne, 131 Colo. 20, 279 P. 2d 427 (1955).

this settlement was for injuries suffered by one of the three plaintiffs, who will, as a result of her injuries received in an automobile collision, be confined to a wheel chair for the rest of her life. The ohter two plaintiffs received minor injuries in the same accident.[81] Had the injured plaintiff in any of the six Colorado cases listed above died of his injuries, his dependents would have been able to collect, at the most, $10,000 in damages. Clearly it is more economical in Colorado to kill than merely maim.

In the past twenty years, Alaska and all of the states with statutory limits on damages for wrongful death have raised their maximum limits as shown in the following chart:

STATE	1935 limit[82]	1955 limit[83]
Alaska	$10,000	$50,000
Colorado	$ 5,000	$10,000
Illinois	$10,000	$25,000
Indiana	$10,000	$15,000
Kansas	$10,000	$25,000
Maine	$ 5,000	$10,000
Massachusetts	$10,000	$20,000
Minnesota	$ 7,500	$17,500
Missouri	$10,000	$25,000
New Hampshire	$10,000	$15,000
Oregon	$ 7,500	$17,500
South Dakota	$10,000	$20,000
Virginia	$10,000	$25,000
West Virginia	$10,000	$20,000
Wisconsin	$10,000	$15,000

It should be noted that Colorado with its $5,000 limit, was in 1935 most conservative in its ceilings on damages, as it is today. The District of Columbia and Connecticut had limits of $10,000 on death awards in 1935, but today have no statutory provisions limiting damages.[84] Virginia has twice raised her maximum limit on damages since 1935 and Alaska currently allows five times as great as award as was permitted twenty years ago.

Melvin M. Belli in his book *Modern Trials*[85] observes that awards in wrongful death cases have increased more than in any other particular type of case. Some states still arbitrarily restrict the amount of the death award, although no justifiable reason, economic, moral or social, presents itself. Mr. Belli says, "Some states, with statutory limitations have raised the amount, but so niggardly, that one must conclude the purpose of the offered gratuity was actually to forestall an attempt completely to remove all statutory restrictions in the particular jurisdiction."[86] Professor McCormick has noted that under an old Anglo-Saxon law each man had his price according to his rank which had to be paid to his

81 Huber v. Scheier and John Deere Plow Co., Colo. Dist. Ct., 2d Judic. Dist., Civ. No. B-2555 (1956).
82 McCormick, Damages 385 (1935).
83 See notes 10 & 11 supra.
84 See note 82 supra.
85 Belli, Modern Trials, § 411 (1954).
86 *Id.* at 2541.

next of kin if he were slain, and has compared this old idea with the fixed sum recovery limits in some American death acts.[87]

Further, he asserted:

> "It may be supposed that such limitations were political concessions made to the opponents of the original acts which introduced liability for death and that they were conceded because of a general mistrust that juries might allow exorbitant sums for fatal injuries for which no doctrines for measuring damage had been charted."[88]

In considering the Colorado wrongful death act and its history, several items are of interest. If there was any opposition to the original death act, such opposition was not vocal,[89] and the fact that no limit on damages was included in the law should be noted.[90] What influence caused the 1877 legislature to limit the damages in death actions[91] is open to speculation, possibly a general mistrust of juries, or the effect of an insurance lobby.

Mr. Belli has stated that private insurance companies in California advocated, in advertising to prospective jurors, that awards should be cut or the insurance companies would "go broke" and insurance would soon cost "more than you can pay." This advertising was not, according to Mr. Belli, joined in by all private insurance companies. Mr. Belli suggests that perhaps with revaluation of premums there will have to be, likewise, a more efficient operation, with less of the premium dollar going to the companies.[92]

The effect on damages of changes in the economy is well stated in a recent law review note, "If the economy is marked by gradually rising costs, verdicts based on today's wages and costs and ideas of the value of money will naturally tend to exceed verdicts of a decade or more ago."[93] The article mentions that the courts should take into account well known and apparently permanent changes in the purchasing power of money and points out that statutory limits in death actions make no more sense than in actions for

87 See note 82 supra.
88 *Ibid.*
89 Colo. H. Jour. 9th Sess. (1872).
90 Colo. Laws at 342 (1872).
91 Colo. Laws c. 877 §§ 1-3 (1877).
92 See note 85 *supra* at 2542.
93 James, Jr., Damages in Accident Cases, 41 Cornell L.Q. 582 at 605 (1956).

personal injuries and cannot be justified in view of changes in amounts of verdicts in states where no statutory limits exist.[94] An article in the Louisiana Law Review points out that if counsel can show that the recovery in his case is excessive or inadequate in view of the actual change of the purchasing power of the dollar, the court will probably adjust the award on that basis.[95] Using the figures given by the United States Bureau of Labor statistics, a verdict of $5,000 in 1916 should have been $11,905 in 1951 if increased equally with rises in cost of living. On the basis of these figures one must conclude that even in 1951 when the Colorado Legislature doubled the death award they were oblivious of the economic change in the situation at that time. That the Colorado Supreme Court has not always agreed with the legislature as to the monetary worth of a human life is shown by the fact that the court in 1917 allowed damages in the amount of $12,500 to a widow with one child, for the wrongful death of her husband.[96] This case was brought under the Federal Employer's Liability Act which does not limit damages for wrongful death. It is interesting to observe that the court awarded damages, in this case, of an amount two and one-half times greater than the maximum damages then allowed by the state's wrongful death statute.

From the present state of the law limiting damages in Colorado wrongful death actions, these conclusions are self evident; that it is cheaper in Colorado to kill than to injure; that Colorado has the least progressive and least humane wrongful death law in the nation; that if the insurance lobby, rather than legislative inertia and conservatism, is responsible for the $10,000 limit on damages, that lobby operates in a skillful, subtle manner; that the Colorado statute is entirely unrealistic in view of the current economic situation; and that Colorado lags behind all of the other states and territories in placing a proper value on human life.

It is to be hoped that, during the present session of the Legislature, Colorado's law makers will revise the wrongful death statute, clarifying its language and bringing it up to date. In the opinion of this writer the following changes in the law should be

94 *Id.* at 606-08.
95 Comment, 15 La. L. Rev. 743 (1955).
96 Vallery v. Barrett, 63 Colo. 548, 167 Pac. 979 (1917).

made: (1) Clarification of the language regarding those entitled to sue.

The present statute provides that suit may be brought "By the husband or wife of deceased; or if there be no husband or wife, or he or she fails to sue within one year after such death, then by the heir or heirs of the deceased. . . ."[97]

Amendment should eliminate any confusion relating to the right of the widow or widower to bring an action during the second year after the wrongful act has occurred. (2) The time limit during which an action may be brought should begin to run upon occurrence of the death, rather than upon the happening of the wrongful act.[98]. It is conceivable that an injured person could linger upon the brink of death for two years and one day, in which case the surviving heirs would be deprived of just damages for his death. Since, in any case the plaintiffs has the burden of proving the defendant's wrongful act caused death, it would seem more fair to allow a period of one or two years after the death for filing the action. (3) The provision, "having regard to the mitigating or aggravating circumstances attending any such wrongful act . . ."[99] should be eliminated, or the section should be revised to allow exemplary or punitive damages in which the mitigating or aggravating circumstances would be properly considered. The most drastically needed reform in the wrongful death act, is the elimination of any maximum limit on recoverable damages. Under our judicial system, juries, with proper instruction, are deemed capable of awarding just damages in personal injuries actions and in many types of contract and tort suits. Why they should be considered incapable of so doing in death cases is incomprehensible, particularly since the courts may force reduction of jury awards or grant new trials, where damages awarded are excessive. Should the Colorado wrongful death act be revised as here suggested, that act and the survival act together, would provide a realistic and just basis for attempting to compensate in dollars the loss of human life.

97 Colo. Rev. Stat. Ann. § 41-1-1(a) (b) (1953).
98 *Id.* § 4.
99 *Id.* § 3.